

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:

Yellowstone Mountain Club, LLC,

Debtor.

(Full caption on next page)

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) Case No. 08-61570-RBK
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THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

November 13, 2008

Transcript Services:

Proceedings recorded by electronic recording;
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:

Yellowstone Mountain Club, LLC,

Debtor,

Yellowstone Development, LLC,

Debtor,

Big Sky Ridge, LLC,

Debtor,

Yellowstone Club Construction
Company, LLC,

Debtor.

1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 MISSOULA, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for hearing
5 on November 13, 2008, in the United States Bankruptcy
6 Court, District of Montana, The Hon. Ralph B. Kirscher,
7 presiding:

8
9 The following proceedings were had:

10
11 THE COURT: Good afternoon. Please be seated.
12 Mr. Patten.

13 MR. PATTEN: May I approach the bench, Your
14 Honor?

15 THE COURT: You may.

16 MR. PATTEN: Your Honor, I don't know how the
17 easiest way to do this is, but we have met with some of the
18 objectors this morning and have gone through the order that
19 was submitted to you yesterday as the proposed order and
20 have, by handwriting, made some interlineations. They're
21 very minor. And we can either print -- redo the order and
22 submit it to the Court, or the Court's got the additional
23 language that is agreeable to us.

24 Now, I was handed, on the way into the courtroom,
25 some much more substantial proposed changes from Mr. Snow.

1 And I understand that Mr. Alter may have some comments or
2 some continuing concerns, but the document that I've just
3 handed you reflects our review of the order this morning
4 with Mr. Alter.

5 THE COURT: Okay. Well, let me get the caption
6 into the record. This is the continuation of the hearing
7 on interim cash collateral and other matters in In Re:
8 Yellowstone Mountain Club, LLC; Yellowstone Development,
9 LLC; Big Sky Ridge, LLC; Yellowstone Club Construction
10 Company, LLC. I'll collectively refer to them under
11 08-61570.

12 Just as a housekeeping matter, as I recall - and
13 I didn't look at the docket earlier - but there's been no
14 objection to the joint administration, correct, or has
15 there?

16 MR. PATTEN: Not that I've seen, Your Honor.

17 THE COURT: I realize there's time to respond,
18 but I'm just wondering if no one has an objection, we can
19 just deal with that.

20 UNIDENTIFIED SPEAKER: We certainly do not have
21 any objection, Your Honor.

22 THE COURT: Okay. Is there anyone else that
23 would like to lodge any objection to that? Mr. Bender.

24 MR. BENDER: Your Honor, Ronald Bender for Snow.

25 I think in terms of our objections, we objected

1 to the joint administration to the extent that they
2 comingle all the funds and don't keep separate accounting
3 for it by each entity.

4 THE COURT: Well, I don't think that -- well,
5 Mr. Patten, how do you address that?

6 MR. PATTEN: Well, I think we're not going to
7 comingle the funds and we do have to provide an accounting
8 for where the money goes. So I understand the concern,
9 but --

10 THE COURT: And, essentially, for purposes of
11 administration so that anyone having a motion or a response
12 will file it under one case number rather than having
13 multiple case, case filings. They'd just add the -- add to
14 the docket. And we'll do it under one debtor's name.
15 Okay? So I see no objection.

16 Is Yellowstone Mountain Club, LLC, the one we
17 want to put everything under?

18 MR. PATTEN: Yes, Your Honor.

19 THE COURT: Okay. So the motion for joint
20 administration is granted. The primary case will be
21 Yellowstone Mountain Club, LLC, 08-61570. And there's no
22 need to file anything in the others at this point in time,
23 subject to subsequent order of the Court. That would be
24 true with claims, as well.

25 So that gets us back to the interim order.

1 Mr. Bender.

2 MR. BENDER: Your Honor, just for the record, on
3 behalf of the -- Michael Snow, we filed - and it's on your
4 system, I think - the notice of lodging proposed deletions
5 and additions to the revised proposed interim order, and
6 get copies to some counsel here today. And I just -- I
7 have a copy for the Court if the Court wants a hard copy --
8 (inaudible, talking over each other.)

9 THE COURT: It's been filed?

10 MR. BENDER: Yes.

11 THE COURT: If you would approach, please. Given
12 the other hearings I have had today, I have not seen this.
13 So thank you.

14 MR. BENDER: And, basically, by interlineation,
15 on the second page I list the pages that our proposed
16 changes and deletions are.

17 THE COURT: Mr. Patten, have you seen this?

18 MR. PATTEN: I have, Your Honor.

19 THE COURT: Okay. Have you discussed any of this
20 with Mr. Bender?

21 MR. PATTEN: No, I have not.

22 THE COURT: Okay.

23 MR. PATTEN: But I can advise the Court that
24 we're -- we object to what he has proposed, which I think
25 is essentially an attempt to renegotiate our terms and

1 conditions with Credit Suisse.

2 THE COURT: Okay, thank you.

3 MR. ALTER: By the way, Your Honor, I'm happy to
4 walk through the interlineations that were made at my
5 request and then also to identify for the Court those
6 changes that were not made, and allow the Court to either,
7 either disregard them or insist upon them.

8 THE CLERK: Excuse me. Counsel, would you
9 identify yourself, please?

10 MR. ALTER: My apologies. My name is Jonathan
11 Alter. I'm with Bingham McCutchen. And I represent the ad
12 hoc committee of members of Yellowstone Club.

13 THE CLERK: Thank you.

14 MR. ALTER: My apologies.

15 UNIDENTIFIED SPEAKER: Your Honor --

16 THE COURT: You know, you may be seated. I'll
17 call on you in a moment.

18 MR. BENDER: Okay. At least for the record, we
19 have -- I've not seen that document that they presented to
20 you.

21 THE COURT: Okay. I'm sure you will. You know,
22 in looking through this, obviously I found interest in much
23 of it. Certainly, it appears that pretty much the debtors
24 have given up just about anything and everything as a claim
25 against CS, whereas CS has maintained every right and claim

1 that they could ever have against the debtors. Which I
2 guess I'm not surprised; they're also the one providing the
3 \$4.5 million.

4 But I guess the concern I have is: They've
5 already given \$307 million; the 4.5 is a fairly small
6 amount; and in the documentation for the \$307 million, did
7 they take all the issues -- take all the rights and claims
8 as they've done in this document?

9 As I was reading this late last night, I'll be
10 honest with you, I had some real questions whether I would
11 further consider it and approve this interim order. The
12 things that trouble me with interim orders - and you may
13 get this from other judges, as well - is when you start
14 looking through some of this, they're contract terms, some
15 of this stuff, between the parties. And here you've got
16 me, as the judge, imposing contract terms that should be in
17 a separate document, maybe in the terms document. That's
18 not an order. And I guess that's, that's what troubles me
19 with these things.

20 Why don't we just grant it, grant the motion as
21 it's submitted, and the parties work out -- according to
22 the terms and conditions of the motion and the agreement
23 that's attached to the motion? Why am I going through 27
24 pages determining rights and liabilities or releases and
25 waivers if that's what you've agreed to in a separate

1 document? I think it's overkill. And when I got done
2 reading all of this last night, I was kind of like, "Why am
3 I doing this?"

4 Now, I also, then, thought more practically: If,
5 in fact, I don't sign this, what's the consequence? What
6 happens to the debtor? And if I don't sign it, there's no
7 financing at this point in time, and how does the debtor
8 meet obligations it has coming up tomorrow, next week, and
9 I guess the week after under this agreement? And if
10 nothing can happen in those three weeks, we're going to be
11 back here probably without financing anyway if there's not
12 a renegotiation that people are agreeable with.

13 So from a practical standpoint, I hate to see
14 this early in the stage a debtor the ability to at least
15 try to survive and reorganize through a period of time. I
16 think three weeks is a really short period of time, but
17 that's what has been kind of negotiated here. And it
18 certainly doesn't delay the inevitable if financing can't
19 be obtained.

20 The thing that's a little more troubling is --
21 and maybe there's been some interlineations that kind of,
22 that deal with it, but the distinctions between 4 and --
23 Paragraphs 4 and 18 where there's some reservation to third
24 parties or protections of third parties; and then I think
25 as I read 18, it's like you kind of take it away a little

1 bit. And are those, are they taken away?

2 And, of course, I'm then staring at the, the
3 provision in this interim order that says: Well, Judge,
4 you can do whatever you want, but if you sign an order that
5 doesn't contain everything that's in this interim order, CS
6 is going to walk anyway because we have to approve the
7 order.

8 So I'll be honest, I find it a little bit
9 overreaching. And I know I'll hear the comment, "Hey, we
10 do this in every other court. In Delaware, we do this all
11 the time." And yet when we have meetings, Delaware judges,
12 "We don't do all that stuff necessarily. You may hear
13 that, but we don't necessarily do it." Now, I'm not saying
14 everything in this order isn't in Delaware's orders; I'm
15 just saying we hear that when we're visiting with our
16 colleagues.

17 Debtor did negotiate this. The testimony
18 yesterday was that these are the best terms they could come
19 up with. The other, the other prospective lender wanted
20 not as good of terms. So it leaves me in a real quandary
21 because if I don't sign this, where does that leave
22 everybody? Still at the negotiating table, or do we have a
23 much more severe situation and CS says, "We're not going to
24 play anymore. We're just going to start -- we're going to
25 move to modify stay, we're going to move to convert, we're

1 going to do whatever we need to do to get this thing
2 going"?

3 And then I'm looking at: Where are the members
4 in all of this? Certainly, given 360-some members, there's
5 probably adequate wealth to probably finance the
6 \$4.5 million for the three weeks without having to give CS
7 all the super-priority. And where are they? What interest
8 do they have, and why haven't they stepped up to help?

9 So these are all questions that are running
10 through my mind as I'm reading this thing last night. And
11 I'll tell you, I've gone back and forth. If you would have
12 asked me at one o'clock last night, I would have said,
13 "This isn't going to get signed. I'll let things fall
14 where they fall." This morning, and maybe because of other
15 hearings I've already heard today, maybe I've tempered my
16 thoughts.

17 So, Mr. Patten, certainly you can add what you
18 would like.

19 MR. PATTEN: Your Honor, I think based on the
20 testimony from yesterday, that if, if we don't have an
21 order today, we have a wreck, we're going to lose
22 employees.

23 THE COURT: But are we going to have a wreck in
24 three weeks anyway?

25 MR. PATTEN: Maybe, but we know --

1 THE COURT: But in the interim, we've given --
2 we've taken away any defenses that the debtor may have in
3 any of this lending and given them maybe additional rights
4 that they wouldn't have had under their existing
5 documentation.

6 MR. PATTEN: Well, Your Honor, I think that
7 there's something that I think is fairly certain, and that
8 is that if we don't have a DIP order today, financing order
9 today, the Yellowstone Club is done; it's going to shut
10 down; and all of the value that exists by reason of the
11 ongoing business, if you will, is going to evaporate; and
12 everybody is going to suffer. If the order is approved,
13 then we, then we breathe three weeks of life into this
14 while we put together a longer-term arrangement. But, Your
15 Honor --

16 THE COURT: Mr. Patten, when you say everyone's
17 going to suffer, who's going to suffer?

18 MR. PATTEN: I think the members are going to
19 suffer, I think the creditors are going to suffer, and I
20 think the debtors are going to suffer.

21 THE COURT: But here from an ad hoc group, I'm
22 hearing the members aren't very happy with this financing.

23 MR. PATTEN: Well, to be honest, I don't think
24 anybody is happy with it here, Your Honor. This isn't,
25 this isn't, certainly isn't our wish list; I don't think

1 it's Credit Suisse's wish list.

2 THE COURT: But they'd like their money. I'm
3 sure that's their bottom line.

4 MR. PATTEN: Well, this is a result of what seems
5 like about two weeks of conference calls. And this is the
6 best arrangement that we can come up with. We have
7 considered other proposals. And for various reasons - and
8 they weren't necessarily easy to compare, you know, next to
9 each other - but this is the one that appeared to provide
10 the best going-forward arrangement.

11 It certainly isn't perfect from the debtors'
12 point of view, but it's what we have. And this is the
13 terms that we were able to negotiate, and it reflects
14 decisions that the debtors have made with respect to
15 waiving rights against Credit Suisse and others. We
16 haven't tried to track any other third party into any kind
17 of waivers. But this is, this is what we have. And if it
18 isn't approved, then there probably won't be any reason to
19 have any further discussions about financing because it
20 will be too late.

21 So, Your Honor, this keeps us going. It, again,
22 isn't perfect, it isn't acceptable to everybody, but this
23 is the decision made by the debtor to move forward on this.
24 And they're willing to make the commitments in the waivers,
25 etc., both in the term sheet and in the proposed order, and

1 that's the -- that's what they're prepared to live with.

2 THE COURT: Andy -- Mr. Patten, at this time - my
3 note says "Andy" here, I'm sorry - Mr. Patten, what
4 analysis have you done or have the debtors done regarding
5 the stipulations here that all prepetition obligations are
6 legal, valid, and binding? Has there been review of
7 documents and financing statements and security documents?

8 MR. PATTEN: I've reviewed the security
9 documents, the mortgage, the financing statements, and I've
10 reviewed counsel opinion at the time the loans were made.

11 THE COURT: (Inaudible, audio cuts out) -- full
12 release by Debtors?

13 MR. PATTEN: Yes. Your Honor, you mean --

14 THE COURT: Well - (inaudible, audio cuts out) -
15 Debtors fully release any claims, counterclaims -
16 (inaudible) - action, defenses, setoffs, whether arising
17 under the code, I'm sure, before and after filing as it
18 relates against prepetition agent, prepetition lenders,
19 affiliates, officers, directors?

20 MR. PATTEN: That's been a considered decision to
21 do that, yes.

22 THE COURT: And CS wouldn't expect anything less.

23 MR. PATTEN: No. And I think that is pretty
24 standard, Your Honor.

25 THE COURT: You did make a reference or a

1 revision which -- on the Paragraph D, page 6, related to
2 fair and reasonable, I see, subject to Rule 2016. Under
3 Paragraph 6(b), page 7 where we're talking about DIP
4 (quoted as read):

5 "The term sheet shall constitute a valid and
6 binding obligation of debtors to" - (inaudible) - "debtors
7 in accordance with its terms. No obligation payment
8 transfer" - (inaudible) - "security under DIP term sheet,
9 or this order shall be stayed, restrained, voidable,
10 avoidable for a" - (inaudible) - "under the bankruptcy
11 code."

12 I guess as I read that, that impacts trustees,
13 creditor committees, any other interested parties; or does
14 it only apply to Debtor?

15 MR. PATTEN: Your Honor, I think it applies only
16 to the debtor.

17 THE COURT: I guess I'm not sure if it says that.

18 MR. PATTEN: Well, to the extent -- if I
19 understand this right, to the extent that money is advanced
20 under this arrangement, those advances are not going to be
21 challengeable by anybody.

22 THE COURT: Anybody.

23 MR. PATTEN: By anybody, to the extent that
24 they're advanced.

25 MR. ALTER: Your Honor, to the extent of

1 Paragraph 21, I believe, there's a provision that's called
2 "preservation of rights granted under the order".

3 Under Subparagraph B, what that says is to the
4 extent, essentially, of any monies advanced, regardless of
5 what happens in context of the final order, the order will
6 be binding in full upon all parties.

7 THE COURT: Did you say "Paragraph 21"?

8 MR. ALTER: I believe it's 21(b), but my memory
9 might be wrong. It's called "preservation of rights
10 granted under the order".

11 Oh, I'm sorry, it's 17. I'm looking at the -
12 (inaudible) - and it changes the number.

13 THE COURT: Oh, yeah, it's Paragraph 17, page 17.
14 You didn't change the -- I'm not looking at your most
15 recent version, but the 90-day provision is still in
16 regarding -- in Paragraph 18 on page 20 as it relates to
17 filing any adversaries -- (inaudible)?

18 MR. PATTEN: That was unchanged, Your Honor.

19 THE COURT: Okay.

20 MR. ALTER: Your Honor, they might be able to
21 clarify that provision and have one less comment later. My
22 understanding, and hopefully Counsel would agree with me,
23 is that to the extent that there's any binding aspect on
24 that provision of other third parties, that the third
25 parties are only bound to the extent of derivative claims

1 by and through the debtor. If there were independent
2 third-party causes of action, those are preserved under
3 this letter.

4 MR. CHEHI: If I may clarify it, Your Honor. And
5 I understand that, you know, you could be troubled by what
6 appears to be a release of all of the debtors' claims and
7 causes of action. Actually, the order is only, in effect,
8 binding upon the debtors - (inaudible) - debtors, and not
9 their estate or any representatives of their estate or any
10 creditors who would seek to assert challenges or claims -
11 (inaudible) - category that are being stipulated and
12 released in the prior Paragraph 4 of the, of the findings,
13 and the like.

14 And this Paragraph 18 is very important because
15 it, it is essentially giving any creditor or a creditors
16 committee, for a period of 90 days following the
17 appointment of the creditors committee, the right to go
18 back and challenge those stipulations, releases,
19 stipulations as to the amount and the validity of our
20 claims, the validity and forceability of our liens, and the
21 like. And Paragraph 18, in a sense, sets up a time frame
22 and a process for that to occur.

23 And so, as is customary in financings, when
24 lenders are lending money in these circumstances and other
25 circumstances, as well, typically they're going to request

1 that the borrower in a commercial arrangement like this be,
2 in effect, at the time of executing the agreement, the
3 lending agreement, acknowledging that it doesn't have any
4 claims against the debtors and that whatever the
5 existing -- I mean the lenders, rather; and that any
6 existing arrangements, credit arrangements between the
7 parties are, you know, valid, etc. Otherwise, the lender
8 would be funding into a borrower that is going to turn
9 around and attack it.

10 But we're not precluding the attack of any
11 creditors, the homeowners, the ad hoc committee, or anybody
12 else within the time frames permitted. And that's the
13 protection for the estate.

14 MR. ALTER: And just to take it one step farther,
15 there is no prohibition in this order regarding
16 non-derivative claims.

17 MR. CHEHI: Oh, that's right. The issue of
18 derivative claims or not, this doesn't preclude people from
19 asserting claims. It just says that for -- there's a --
20 there are two 90-day periods in here measured differently,
21 depending -- the committee gets 90 days from the time it's
22 formed. It's not prejudiced by the delay in that. They
23 have a right to go back and look at whatever -- the
24 stipulations and admissions contained in the order. And if
25 they bring on a cause of action or a challenge to any of

1 those -- the substance of any of those stipulations and
2 admissions and they ultimately are successful with those
3 challenges, then those stipulations and admissions are not
4 enforceable against the estate. And whether it's a
5 derivative claim or not, that's what it's doing. It's not
6 purporting to release the lenders from any claims at all;
7 it just sets a time frame for challenging these relatively
8 basic stipulations --

9 THE COURT: Which I understand. You obviously
10 want a timeline in there.

11 MR. CHEHI: Right, 90 days. And we were -- you
12 know, it was originally 60, which is, you know, sort of a
13 standard in some areas.

14 THE COURT: (Inaudible, talking over each other.)

15 MR. CHEHI: The U.S. Trustee asked for 90 days,
16 three months. So it's going to be three months, which is a
17 fairly ample period of time for somebody to do whatever the
18 debtor has already done in looking at the credit agreement
19 and the closing opinion; and do more, for that matter.

20 UNIDENTIFIED SPEAKER: And, again, so that the
21 record is clear.

22 THE CLERK: Excuse me.

23 MS. TANABE: Your Honor, may we be heard on this
24 issue?

25 THE CLERK: Would you please identify yourself,

1 the gentleman that just spoke?

2 MS. TANABE: Sure. My name is Kesha Tanabe, I'm
3 appearing for Michael Snow.

4 MR. CHEHI: That was Mark Chehi of Skadden-Arps
5 for Credit Suisse.

6 THE CLERK: Thank you.

7 MR. ALTER: And Jonathan Alter again. My
8 understanding is that the 90-day period does not apply to
9 non-derivative claims. That was the point I was trying to
10 make.

11 MR. CHEHI: You know, this is not purporting to
12 preclude anybody from bringing any direct claim. If people
13 have claims against, you know, the lenders, whatever they
14 are, they're going to assert them. This goes to the timing
15 of the challenge of the stipulations and admissions. Thank
16 you.

17 THE COURT: Regarding the term sheet, before
18 that's finalized, I assume the preparatory paragraph would
19 probably be removed that talks about: This is for
20 discussion purposes only.

21 And maybe yours is already off.

22 MR. PATTEN: It will be removed if it hasn't
23 already, Judge.

24 THE COURT: Maybe you've already taken it off of
25 yours. I don't know.

1 MR. CHEHI: We, we don't have the version that
2 Your Honor is looking at.

3 THE COURT: That you gave me yesterday?

4 MR. CHEHI: The one that was given to you
5 yesterday, you know, the term sheet, I think there was a
6 final version that should have been submitted without that.
7 But if there's something on it, you could "X" that out,
8 "for discussion purposes only".

9 THE COURT: Okay. Because this is, in essence,
10 incorporated into the order.

11 MR. CHEHI: Absolutely, Your Honor. And there
12 were a guarantee, a set of guarantor signatures, and a
13 paragraph related to that, which goes to the rear of the
14 term sheet.

15 THE COURT: Exactly. Now, there's some blanks.
16 Have those been filled in? I'm thinking of availability as
17 to dollars. On the bottom of -- there's no pagination of
18 this. It's the second page. At the bottom, it says
19 (quoted as read):

20 "Lenders will fund the DIP loans" - (inaudible) -
21 "closing date" - (inaudible) - "collateral" - (inaudible) -
22 "maintained by the agent." (Inaudible) -- "DIP loans will
23 be made available to borrow upon entry of the interim
24 order."

25 You've discussed what that amount is, or is that

1 still up in the air?

2 MR. CHEHI: Your Honor, it could be the full
3 amount of the 4.4 or 4.5. Or if the Court wanted to limit
4 it to some lesser amount pending the final hearing, given
5 the fact that I believe Your Honor scheduled us to be back
6 here on November 25th, the amount, if not the full
7 4.4 million or 4.5 million should be at least an amount
8 sufficient to cover the debtors' operations through that
9 final -- that next hearing date of --

10 THE COURT: So it would either be the full amount
11 or equal, equal percentages for the three weeks --
12 (inaudible.)

13 MR. CHEHI: Tracks the budget to cover, to cover
14 the debtors at least through the final hearing day or a day
15 thereafter.

16 THE COURT: Okay. Well, I'm just wondering if
17 you guys had the -- what number you guys wanted to put in
18 here.

19 MR. CHEHI: We're not opposed to having the full
20 amount in there. We did not want to be presumptuous to say
21 that it should be all authorized on Day 1. But given the
22 short period of time here, Your Honor, it's --

23 THE COURT: Well, I think it's being all
24 authorized by the interim order. But it could be, it could
25 be disbursed, I guess, by an agreement with the parties in

1 equal installments, or something.

2 MR. PATTEN: Well, I think it would be disbursed
3 from that account into the debtor-in-possession account.

4 THE COURT: Yeah, okay. I'm just looking for
5 blanks, just to make sure there's something that --

6 THE CLERK: Excuse me, Judge. I believe there
7 might be someone on the telephone that wanted to make a
8 comment.

9 THE COURT: Okay. Well, I'll take those up in a
10 minute.

11 Voluntary prepayments. I guess I wondered why
12 you would only take minimums of 100,000. Why wouldn't you
13 take anything?

14 MR. CHEHI: Your Honor, in some senses there's an
15 administrative cost to processing the payments, and the
16 like. In this case, unfortunately, I don't think we're
17 going to have to worry about any voluntary - (inaudible) -
18 payments before the term -- (inaudible.)

19 THE COURT: Well, you're probably right. I just
20 saw the number and thought it's interesting.

21 And I'll tell you, I don't know which page it is
22 because they're not paginated, but it deals with expenses
23 and indemnifications (quoted as recorded):

24 "Borrowers" - (inaudible) - "indemnified,
25 provided that no indemnified person would be indemnified

1 for any costs, etc., as a result" - (inaudible) -
2 "negligence or willful misconduct."

3 It's a fairly high standard. Is there a reason?

4 MR. CHEHI: Again, that's, that's the standard
5 term that the, that the lenders are assisting upon. And in
6 some other jurisdictions, Your Honor, it's fairly standard
7 and an expectation of the parties.

8 THE COURT: Okay. Under Exhibit A, "additional
9 conditions precedent", Paragraph 3, about the fifth line, I
10 think we're missing the word "days". We have (quoted as
11 recorded: "Three business after the petition date."

12 I assume it's "days".

13 MR. CHEHI: Yes, Your Honor.

14 THE COURT: And then Exhibit A, Exhibit B,
15 Exhibit -- or Annex. I guess these are Annex A, Annex B,
16 the approved budget, that's, that's what was a separate
17 document?

18 MR. CHEHI: Yes, Your Honor. That was the
19 exhibit entered into the record yesterday.

20 THE COURT: This is the management case weekly
21 DIP budget?

22 MR. CHEHI: Correct.

23 THE COURT: Okay. And then the form of note,
24 that's probably your standard note.

25 MR. CHEHI: There are in excess of a dozen

1 participating lenders, I believe, in this at this point,
2 and so there's going to be a form of note that will be
3 roughly identical for all them. And as a condition of
4 closing, there's actually going to have to be a note signed
5 for each of them.

6 THE COURT: Okay. So is that part of this order?
7 I mean this is an attachment, attachment to the order,
8 right?

9 MR. CHEHI: Yeah. That can be to-be-provided,
10 Your Honor. I think everyone's in agreement on the form of
11 the note.

12 THE COURT: I mean I don't think terms of the --
13 forms of the note need to be in the court order.

14 MR. CHEHI: Not today, Your Honor.

15 THE COURT: What about the organizational
16 structure? Is that something --

17 MR. CHEHI: That's something that's required by
18 the terms of the facility. Since the original Credit
19 Suisse loan was put in place, there have been subsequent
20 changes to the organizational structure of the, of the
21 borrowers and their subsidiaries. And that information has
22 not yet been shared entirely with Credit Suisse. And so as
23 part of the conditions to closing or conditions to continue
24 funding, there's going to have to be an organizational
25 chart provided by the company. We understand that that's

1 being prepared and they have to clean it up and provide it
2 to us so we know who the subsidiary guarantors are, for
3 instance, Your Honor.

4 THE COURT: Okay. I guess really what I --
5 probably the more important question is: Why can't the
6 form of the note, Annex B, be pulled out of this term? And
7 if there's a reference to an incorporation of Annex B in
8 this term sheet, why isn't it just as attached to -- or as
9 subsequent -- as separately identified in the note as well
10 as this organizational structure? I guess I just don't see
11 why you need to hold -- I mean if I sign this today, it's
12 going to get docketed today.

13 MR. CHEHI: Yes, Your Honor. I think they're for
14 working purposes. Given the fact that time is of the
15 essence with this, this financing, we could -- Your Honor
16 could note on each of those pages "to be provided".

17 THE COURT: I guess my point is: Why do they
18 even need to be in this, though? I mean you want them for
19 your loan documents. Why can't they just be in your loan
20 documents?

21 MR. CHEHI: Well, Your Honor, what you're holding
22 there, the term sheet, is actually our loan document
23 because we do not have a fully -- we don't have an
24 additional credit agreement. The term sheet and the form
25 of the notes, and the like, and all the terms, and that, is

1 the governing loan documentation at this point.

2 THE COURT: But you're, you're incorporating, by
3 reference, this into my order, right, or my law?

4 MR. CHEHI: Yes.

5 THE COURT: I mean the term sheet is Exhibit 1.

6 MR. CHEHI: Correct.

7 THE COURT: I just think it's kind of unwieldy to
8 be having the note and the organizational structure in my
9 interim order. It should just be in your loan documents.

10 MR. CHEHI: Typically, what we would do, Your
11 Honor, had we had the time and the opportunity and had the
12 debtors had the resources, etc., to draft a complete formal
13 credit agreement, in addition to the term sheet, the credit
14 agreement itself would be attached to the form of order
15 because the Court is, in effect, authorizing the financing
16 pursuant to the credit documentation between the parties,
17 and we attached that to the form of order. (Inaudible) --
18 authorizing this particular credit agreement, these
19 particular terms.

20 In this case, the term sheet is a relatively
21 detailed term sheet. And for purposes of the interim
22 order, at least - and maybe for the purposes of the final
23 order, as well - we'll be operating off of the term sheet
24 with those various exhibits. And by the time we get to
25 the, you know, the final hearing, we would expect that

1 we'll have, you know, have all those forms together. And,
2 in fact, before there's going to be any significant funding
3 except to the extent that Credit Suisse, you know,
4 otherwise consents, the debtors will have to obviously
5 provide the notes and the, and the other documents -
6 (inaudible) - organizational structure that are required.

7 THE COURT: Then do you expect that the signed
8 document from the subsidiary guarantors are also included
9 as an attachment to the interim order as part of the term
10 sheet?

11 MR. CHEHI: Yes, to the rear of the term sheet.

12 THE COURT: So, what, this gets filed without
13 signatures?

14 MR. CHEHI: Yes, Your Honor, you're authorizing
15 those -- that form of documentation. And then once we've
16 received the signatures, we'll feel comfortable. And that
17 will be part of the closing conditions that we actually
18 have signatures from the guarantors.

19 THE COURT: Mr. Chehi, you basically are telling
20 the Court that, but for this interim order being signed as
21 it's presented to me at this point in time with the term
22 sheet and the budget attached, you won't provide interim
23 financing?

24 MR. CHEHI: Your Honor, that's correct. And
25 that's the directive we received from our clients, of

1 course. I'm just a lawyer here. But these were the terms
2 that everyone agreed to. And, in fact, the commitments to
3 fund, and the like, that have been received from the
4 various lenders who are willing to provide this facility is
5 predicated upon these forms of documents which they and
6 their attorneys have reviewed and clearly instructed us
7 that there's not to be any changes to the terms. These are
8 the, these are the terms upon which they're willing to
9 lend.

10 THE COURT: Mr. Patten, if, in fact, I don't sign
11 this order, what other options do you have on behalf of the
12 debtor for interim financing?

13 And this was testified to yesterday --

14 MR. PATTEN: Yeah.

15 THE COURT: -- but I guess just want you to
16 restate it.

17 MR. PATTEN: Well, there's been discussions and
18 negotiations with Cross Harbor who have offered to provide
19 debtor-in-possession financing.

20 THE COURT: At the terms that was testified to
21 yesterday?

22 MR. PATTEN: Yeah. They would require a priming
23 lien, they would require a confirmed plan by February 13th,
24 they would -- as I understand the proposal, they would
25 require a 363 sale immediately after February 13th, and

1 they would provide funding up to February 13th without a
2 commitment to fund any further. There would be a --

3 THE COURT: To which Credit Suisse is, is --
4 objects to?

5 MR. PATTEN: I think what Credit Suisse objects
6 to is the priming lien.

7 THE COURT: Mr. Chehi, I think I'll have you
8 confirm that. I think that's what I heard yesterday.

9 MR. CHEHI: Yes, Your Honor. To the extent that
10 any party in interest would, you know, propose
11 debtor-in-possession financing and there were to be a
12 motion filed, which there hasn't been, of course, that
13 would purport to or request approval of priming of our
14 preexisting liens, we would certainly oppose that. And in
15 the case of, you know, Cross Harbor, and the like, given,
16 you know, relationships with the company, we would also
17 have additional reasons to object to that type of priming
18 in there providing the facility in the first place.

19 But we are looking forward to working
20 cooperatively with all the parties. I think, pursuant to
21 the hearing yesterday, there have been actually a number of
22 meetings between all of the parties. And since the hearing
23 concluded yesterday, everyone is working in good faith
24 towards trying to come up with a global resolution of all
25 of the issues, if possible. And so we look forward to

1 doing that.

2 And our clients certainly feel that this is the
3 right thing to be done now for this three-week period to
4 permit the parties to work, but we would oppose any
5 alternative DIP financing that would prime us or contain
6 any other terms and conditions which we think would be
7 unacceptable for these debtors at this particular time.

8 MR. ALTER: Your Honor, Jonathan Alter, if I
9 might.

10 THE COURT: You may.

11 MR. ALTER: Thank you. The issue of priming
12 isn't going away, so we shouldn't fool ourselves. To the
13 extent that we're back in front of this Court in three
14 weeks, there's a very strong likelihood that this is going
15 to be death by 1,000 cuts if CS is insisting on doing
16 another very small interim financing and prohibiting and
17 arguing vehemently that no nobody else can finance this
18 debtor and prime their interests.

19 What the members clearly want is some long-term
20 financing package that runs for a reasonable period of time
21 to provide some degree of certainty for this business to
22 allow them a reasonable restructuring process. And rest
23 assured, no matter what the Court does today, we will
24 endeavor to give every single effort that we possibly can
25 to try to find ultimate financing that runs through a

1 season, that provides assurances to the employees, you
2 know, provides for assurances to the businesses that rely
3 upon the Yellowstone for their success through a winter
4 season. But I'm going to speculate that many, if not all
5 of them, are going to require some degree of priming. So
6 the priming issue is probably coming back; we're just
7 delaying the day of reckoning a couple of weeks.

8 THE COURT: Yeah. I mean that's, that's the
9 trouble I see with this three-week lending. And I'm sure
10 the debtors concur, they'd like to have a longer, longer
11 term of interim financing which would give them additional
12 time to negotiate a plan of reorganization, which is their
13 goal. So we are really under a crunch. And when I say
14 "we", I mean everyone is.

15 Mr. Patten.

16 MR. PATTEN: Your Honor, there's a, there's a
17 meeting scheduled next week for everyone to get together
18 and work on a longer-term financing. I think one of the
19 problems that, that all of us face is that this bankruptcy
20 has come to a head literally in the last couple of weeks,
21 and so there is a lot of information that people don't have
22 and that people have to get in order to evaluate any kind
23 of a longer-term arrangement. And that's the basis for
24 the, the three-week proposal, is that enables Credit Suisse
25 to try and fill in a lot of blanks that it has about the

1 business and where the business can go and what the
2 business plans are going to be. And that without that,
3 they're flying in the dark and are unwilling to make any
4 longer-term commitment until they have that information and
5 can analyze it and digest it and understand it.

6 THE COURT: And I would think, from the
7 standpoint of CS, they have enough money into this project
8 that in order to get their money out of it, they need to
9 see some things occur to recover the \$307 million.

10 MR. PATTEN: Or -- but I'm not sure, and I don't
11 want to speak for them, but I think they have to be
12 satisfied they're not throwing good money after bad.

13 THE COURT: Exactly. I cut off some people
14 earlier. If you would like to make additional comments,
15 I'll certainly allow that for the record. Mr. Alter?

16 MR. ALTER: Yes. Thank you, Your Honor. And I
17 recognize fully the position taken by CS. And I guess in
18 some ways, some of my comments are simply notifying the
19 Court the provisions in this order so that Your Honor is
20 aware. I note that one change was made that was simply
21 factual, which is to add that this hearing occurred on --
22 over a two-day period.

23 With respect to Paragraph 3 of the order, we have
24 placed in there certain language that reserves the rights
25 of parties to object in the context of the final order.

1 And I believe that language was acceptable.

2 In addition, in Paragraph 5(d), we spoke with the
3 debtors' counsel and with CS and placed some language in
4 there that preserves the right to actually -- for Your
5 Honor to rule on issues of professional fees associated
6 with the DIP lenders.

7 With respect to Paragraph 7(b), I simply note for
8 the Court that there is no carve-out for any creditors
9 committee. I also note for the Court that it's probably
10 academic since we're talking about a two-and-a-half-week -
11 three-week period of time. But I assume that in the
12 context of a final order, that issue will come back.

13 THE COURT: That may need to be dealt with. I
14 guess we'll see. Because, obviously, the 341 meeting,
15 maybe it's been set at this point. I'm not sure.
16 Mr. McKay can probably elaborate on that. But I suspect
17 it's in December sometime.

18 TRUSTEE MCKAY: I believe it's either December
19 17th or 18th.

20 UNIDENTIFIED SPEAKER: It's the 18th, Your Honor.

21 THE COURT: Okay. The 341 meeting, just to
22 paraphrase what was said probably off the record, is
23 December 18th --

24 TRUSTEE MCKAY: And that will be held in Butte.

25 THE COURT: -- which will be held in Butte for

1 anyone that wishes to attend. At what time?

2 TRUSTEE McKAY: Ten o'clock.

3 THE COURT: Ten o'clock. So, obviously, there
4 won't be a creditors committee up and running probably
5 before that time.

6 TRUSTEE McKAY: We're going to make every effort,
7 Your Honor, to get our arms around that in the next several
8 days. And it may be that we will be able to appoint one.
9 And I've also been talking with Mr. Alter and other parties
10 about the possibility that it may be that they will want to
11 make the motion asking the Court to order us to appoint a
12 separate equity -- or members committee. My concern is
13 that the general unsecured creditors may sort of get
14 swallowed up in the whole - (inaudible, out of range of
15 microphone) - and so we're thinking about that possibility,
16 also.

17 THE COURT: Yeah. Just to paraphrase again - I'm
18 sure Mr. McKay is probably off the sound system - but
19 they're looking at trying to do something regarding the
20 official creditors committee very shortly - in the next few
21 days, if possible - and see where they're at with that, as
22 well as to determine the appropriateness of having some
23 type of ad hoc official members committee, as well. So --

24 MR. ALTER: That is correct. And we are engaged
25 in conversations at this point in time.

1 Your Honor, my next comment and notation for the
2 record is in Paragraph 9, which is entitled "protection of
3 DIP lender rights".

4 And, again, I understand the position that's been
5 espoused by CS and its counsel. I note for the record that
6 in the event of a default, in five business days, the
7 automatic stay is automatically vacated. That obviously
8 puts the onus upon other parties to rush in, find Your
9 Honor, get a hearing, and get an order within five business
10 days.

11 I also note that the CS counsel has not agreed
12 that there can be an emergency hearing, and they have also
13 indicated in this provision that Your Honor is restricted
14 in only looking at the issue of whether there was a
15 default, obviously depriving Your Honor of any other rights
16 to consider the equities of the case under Section 105 or
17 otherwise. Obviously, that's troubling, but again, I note
18 the position that's been espoused by CS.

19 With respect to Paragraph 10 and the succeeding
20 paragraph which deals with the 506(c) surcharge waiver, my
21 recollection is that counsel and Court properly stated that
22 the language of this document provides that the 506(c)
23 waiver is not affected until the final order is entered.
24 However, I do note for the record that the succeeding
25 paragraph, which is entitled "payments free and clear",

1 provide that any payments that are made are made without
2 any right of anyone to allow for a Section 506(c)
3 surcharge. So with one hand, they giveth; and with one
4 hand, they taketh away.

5 With respect to Paragraph 18, which is entitled
6 "the effect of the stipulation on third parties", there is
7 a provision -- and hopefully you can locate it, Your Honor.
8 I believe it's "III". And they have made a change in the
9 last version of the document. In the past, there would be
10 an extension allowed of the period of time by which third
11 parties can investigate derivative claims if there is
12 consent or if the judge has ordered. They have taken that
13 out. And now the extension of the period of time is only
14 if they consent and the judge orders. So in other words,
15 they have deprived Your Honor of the opportunity to ruling
16 that an extension for cause is warranted unless they think
17 that you should.

18 By the way, I also note for the record my
19 understanding that I've confirmed with counsel for CS that
20 the requirement in the bottom of Paragraph 13 that there be
21 a final order entered in favor of - (inaudible) - challenge
22 or claim is not tied to the 90-day period as provided
23 earlier in the provision. In other words, a claim has to
24 be filed against the lender within a 90-day period, but
25 there is not a 90-day period of time to actually get an

1 entry of an order finding that the claim is disallowed or
2 there's otherwise a claim against the lenders.

3 In addition, Your Honor, I note for the record
4 that in Paragraph 20, which is entitled "limitation on use
5 of DIP facility proceeds and collateral", by negative
6 inference, it would seem that the parties are allowed to
7 investigate claims against the, the DIP lenders or the
8 prepetition lenders. I have confirmed with CS's counsel
9 that there is no limitation in this provision on the right
10 of parties to use the funds to investigate claims.

11 And lastly, Your Honor, just as a matter of
12 clarity for the record, I had asked, with respect to
13 Paragraph 22 at the bottom of Subparagraph A, why the
14 attorneys at CS were insisting that they not have to comply
15 with Rule 2019 of the Federal Rules of Bankruptcy
16 Procedure. And I have been told that that is because they
17 only represent one party, they represent CS as the agent.
18 In that case, I would have no objection to that language.
19 Thank you.

20 THE COURT: Thank you. Mr. Bender, I believe you
21 had some comments that I cut you off earlier on.

22 MR. BENDER: I do, Your Honor. Ronald A. Bender
23 for Michael Snow.

24 I just wanted to point out that in terms of the
25 proposed order, we filed a notice of the deletions and

1 additions. And I'd be glad to go through the Court with
2 all of them in terms of what they are, but basically, they
3 basically follow our objections in terms of basically
4 giving Credit Suisse, in terms of its -- and the
5 prepetition lenders more rights than they had before. We
6 don't have any problem with the DIP, and all that, but
7 basically giving them more rights that they had before in
8 terms of the waiver, and indemnification, the use of the
9 cash collateral, that's what we object to. And I've gone
10 through and listed all our languages that's basically to
11 accomplish that, and that's the - (inaudible) - of what
12 that does. And if the Court wants to go -- wants me to go
13 through that item by item, I'm glad to do it, but it's --
14 they're all marked out clear.

15 And that's our biggest concern, is basically that
16 any prepetition lenders basically are insulating themselves
17 from any claims and rights, and they're getting more rights
18 than they have now. And that's our objection.

19 THE COURT: Okay. Yeah, your objection is noted.
20 You've filed this, as well, haven't you?

21 MR. BENDER: Yes, Your Honor.

22 THE COURT: Yeah. Certainly, the Court has noted
23 your comments and concur with what, what has happened and
24 what is happening with the documentation and the order as
25 it relates to -- (inaudible, audio cuts out.)

1 Anyone else? There was someone maybe by phone
2 that had a comment. No?

3 MS. TANABE: Your Honor, am I audible?

4 THE COURT: Yes.

5 MS. TANABE: This is Kesha Tanabe for Michael
6 Snow. I'd just like to call your attention, if I may, to
7 Paragraph 18 in the proposed order. You know, our concern
8 -- and we heard it said that, that this order wouldn't
9 impact any third parties, especially with respect to the
10 derivative claims against the, the lenders. You know, our
11 concern is that, as a practical matter, the time frame here
12 is actually rather tight. There may be instances in which
13 it's necessary for a party to move to establish standing,
14 for instance, in which it may not be possible for them to
15 commence a proceeding within 90 days, you know, after entry
16 of this order. So, you know, it seems, in a sense, to say
17 in several parts of the order - in Paragraph 4, for
18 instance, and in Paragraph 19 - that, that there's no
19 prejudice to the rights of third parties, but it's always
20 subject to this time frame in Paragraph 18 which may, in
21 fact, make it, as a practical matter, not possible for
22 those parties to exercise their rights, and parties who may
23 or may not be here today.

24 So just concern that, that the release that's
25 being sought here will impact parties that are not present

1 and will not give them a full opportunity to assert
2 derivative claims, you know, in exchange for a, a -- in the
3 context of this DIP order which they may or may not have
4 notice of. So I'd just like to note, if I may, that the 90
5 days is actually rather short and they prejudice those
6 parties, the 90 days referred to.

7 THE COURT: Okay. Any other comment?

8 MR. BUTLER: I'll be brief, Your Honor.

9 THE COURT: Mr. Butler.

10 MR. BUTLER: Yes, sir, Your Honor. Thank you.
11 We've raised that, the issue about the preclusion against
12 third-party investigations yesterday.

13 A thought occurred to me, though: Nothing -- no
14 time frame set forth by this Court in any order you ever
15 enter is excluding Rule 9006 that would give any party
16 within the 90-day time frame the ability to come in and
17 request under Rule 9006 an extension of a time frame that
18 you put in place by order. That may be a middle ground
19 that will cure these concerns if it's too short of a time
20 frame.

21 THE COURT: Well, as I read the order, I can't
22 modify this order without the consent of CS, or they walk.

23 MR. BUTLER: That provision I would strike if I
24 were, but, you know, that's --

25 THE COURT: I told you they threw everything in.

1 MR. BUTLER: Yeah. I tried.

2 THE COURT: I understand. Any other comments?

3 You know, Mr. Butler, it's kind of like the
4 BAPCPA provisions: You know, they try to take away our
5 discretion, you know, through congressional action; now the
6 creditors try to do it through the lending documents. So
7 we're just here to do our job.

8 Any other comments? Billings? I'm not sure
9 who's appearing in Billings.

10 UNIDENTIFIED SPEAKER: I'm just a reporter.

11 THE COURT: Okay. You know, I recognize and I
12 understand everyone's concern and objections - I have them
13 myself - and yet I also see if, in fact, we string this out
14 and I basically send everybody out in the hall and say,
15 "I'm not going to accept that provision and that
16 provision," by the time we're done with it, CS is going to
17 say, "I've got a plane to catch. We're out of here. You
18 know, send us our full amount, and we're not doing interim
19 financing."

20 Now, maybe I'm speaking on their behalf rather
21 than them saying, "Well, no, we want to stay in here and
22 try to work something out."

23 I think at some point, it becomes a diminishing
24 return and they're going to walk, which in the next three
25 weeks does not help this debtor. It's \$4.5 million, a

1 small percentage of the amount that's owed on this project
2 at 307 million-plus. And even though it's primed and there
3 are things in here that probably impact -- well, that do
4 impact some rights, I don't know that there's any other
5 alternative, based upon the testimony that's presented to
6 me. It's either we let this thing go forward for three
7 weeks to see if something can be worked out, or we
8 basically -- I say "no", and it probably ends up converted
9 before the middle of next week unless other financing is
10 arranged, maybe which would occur, I don't know.

11 But in the interim, we've lost -- we've had
12 employees' wages that are due and probably other bills that
13 are due in the interim. And, suddenly, I think the
14 entities are going to start losing their employees because
15 they're going to have to find other employment.

16 And where does that leave -- and maybe we're just
17 deferring the inevitable. Maybe we'll be here on the 25th,
18 and we still are having some difficulties in getting better
19 financing or longer-term financing. But at least at that
20 point, we can say, "The effort was made and the opportunity
21 was given," and we'll see where, where they're at.

22 I don't know what else to do with this, to be
23 quite honest. And maybe we've spent a lot of time going
24 over this stuff that typically in some districts would just
25 be signed without even a hearing, I don't know, but I guess

1 we don't do things quite that way here. I like to have a
2 better, fuller discussion of some of this and have people
3 have the opportunity to voice their objections and --
4 which I'm going to overrule those objections at this point
5 in time. You certainly may file additional objections
6 toward the final financing.

7 Given the record before me, I am going to sign
8 this order. And I'm going to set final hearing for
9 November 20 -- what was it -- the 25th, I believe, wasn't
10 it? We might as well do that at nine o'clock. We'll do
11 that in Butte.

12 Mr. Patten.

13 MR. PATTEN: I was going to ask where it was
14 going to be.

15 THE COURT: Yeah. You know, let me just ask
16 those -- I don't know who all would be at that hearing.
17 And maybe this is a minor thing and I shouldn't be worrying
18 about people's transportation and convenience, but I will.
19 How many people are flying by commercial airlines, and by
20 which commercial airlines, to get here?

21 The reason I ask that is because Butte's going to
22 limit you to Delta at this point in time. And if you're
23 not flying Delta, that's, that's a concern; or if they
24 don't have seats available, that's a concern. You're going
25 to have to go to another site and drive. Which I really

1 shouldn't care about, but I do, because it's just more time
2 and expenses.

3 So Mr. Alter.

4 MR. ALTER: I'll figure it out. I appreciate
5 Your Honor's worry, but I'm sure we'll find a way to get
6 here.

7 THE COURT: Okay. Is that everybody's feeling:
8 Don't worry about it?

9 Everybody will fly in in their private jets, and
10 I won't have to worry about it anyway, so --

11 MR. BENDER: You Honor, that's fine. No private
12 jets here, but we'll make our way there.

13 THE COURT: Well, I assume it's coach, as well.

14 MR. BENDER: We're flying whatever's available
15 Your Honor.

16 UNIDENTIFIED SPEAKER: Your Honor, that's fine,
17 but some of us will still be driving.

18 THE COURT: Yeah, I know, they certainly will.
19 Anyway, it will be in Butte on Tuesday, nine o'clock.

20 UNIDENTIFIED SPEAKER: Thank you.

21 THE COURT: As it relates to the final
22 documentation, Mr. Patten, I need to, I guess, work out
23 with you if you're going to try to get these typed, have
24 your staff type them, e-mail them to me, or what your plan
25 is.

1 MR. PATTEN: Judge, can you sign that order? I
2 appreciate it doesn't look very professional, but we need
3 to get the money moving as soon as we can.

4 MR. HINGLE: Your Honor, there's some -
5 (inaudible, out of range of microphone) - transferring that
6 much money --

7 THE CLERK: Excuse me, Mr. Hingle, we're not
8 picking you up.

9 THE COURT: And you've already missed wire
10 transfer times, probably, for today.

11 MR. HINGLE: We want to wire first thing in the
12 morning. We've asked the Court to initial it -
13 (inaudible) - if you would, sir.

14 THE COURT: Okay. Let me just get the one that
15 I -- see if I wrote all over it.

16 You know, this is a really poor copy, this one
17 here.

18 MR. HINGLE: Do we have the original?

19 UNIDENTIFIED SPEAKER: Andy?

20 MR. PATTEN: Judge, all of the copies that we
21 have are bad, fuzzy like that.

22 THE COURT: Well, who has this on system?
23 Mr. Hingle?

24 MR. PATTEN: No. It starts in --

25 MR. CHEHI: Skadden does.

1 MR. PATTEN: Skadden.

2 MR. CHEHI: We can give it to you.

3 THE COURT: Okay. Well, rather than -- let's --
4 I'm going to recess this. And, Mr. Patten, Mr. Hingle, or
5 whoever that can assist in facilitating this documents,
6 stay, so I can visit with you as to how I'm going to get
7 them.

8 MR. PATTEN: Okay.

9 UNIDENTIFIED SPEAKER: Your Honor, I believe
10 they've already been uploaded to the Court, and the Court
11 should have the final iteration of this order.

12 MR. PATTEN: Not with that, no, not --

13 UNIDENTIFIED SPEAKER: Not with the --

14 UNIDENTIFIED SPEAKER: Not with the
15 interlineations. You would have to add the --

16 THE COURT: The interlineation.

17 UNIDENTIFIED SPEAKER: Yes, sir.

18 THE COURT: I mean this is just such a poor
19 copy --

20 UNIDENTIFIED SPEAKER: I understand.

21 THE COURT: -- that by the time it gets scanned
22 in and printed again, it's going to be worthless.

23 MR. PATTEN: So, Judge, there is a Word copy
24 that's been -- propose to order that's been -- (inaudible.)

25 THE COURT: This version?

1 MR. PATTEN: Yeah. So all we'd have to do is go
2 into the Word version and put in the changes that are
3 handwritten on the copy.

4 May I approach the bench, Your Honor?

5 THE COURT: You may.

6 UNIDENTIFIED SPEAKER: Judge?

7 THE COURT: Yes.

8 UNIDENTIFIED SPEAKER: Are there a bunch of
9 changes on that, on the version --

10 THE COURT: Oh, there are about four -- they're
11 about four or five handwritten ones. They're short
12 phrases.

13 UNIDENTIFIED SPEAKER: I can do them from this
14 end because I have the latest version.

15 THE COURT: You do?

16 UNIDENTIFIED SPEAKER: Yes.

17 THE COURT: Do you have the latest version of the
18 term sheet?

19 UNIDENTIFIED SPEAKER: Not that's marked up. But
20 if somebody gives me the changes that have, have been made
21 today, I can make them to the version that I had yesterday.

22 THE COURT: Okay.

23 MR. PATTEN: And I think we have to write in the
24 dollar amount on the term sheet.

25 THE COURT: Right. Let's go ahead -- this is

1 pretty much administrative. This isn't, you know,
2 prejudiced to anybody's right at this point.

3 I am going to enter the order. I've overruled
4 your objections, they're noted for the record. So I'm
5 going to be in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic recording of the proceedings in the above-entitled matter, all done to the best of my skill and ability.

Jonny B. Nordhagen